

**MARIA D. BARRAZA**  
Claimant

VS.

**FARMLAND NATIONAL BEEF PACKING CO.**  
Respondent

AND

**FIDELITY & GUARANTY INS. CO.**  
Insurance Carrier

Docket No. 1,014,966

Claimant requested review of the June 29, 2006 Award by Administrative Law Judge (ALJ) Pamela J. Fuller. The Board heard oral argument on October 3, 2006.

Stanley R. Ausemus, of Emporia, Kansas, appeared for the claimant. Shirla R. McQueen, of Liberal, Kansas, appeared for respondent and its insurance carrier (respondent).

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument the parties agreed that the ultimate combined value permanent impairment rating issued by Dr. Brown was erroneously calculated. Thus, the parties are in agreement that if claimant's impairment ratings are to be considered as a whole body impairment, then Dr. Brown's combined impairment is 9 percent to the body as a whole, rather than the 11 percent contained within his report, which the parties have stipulated into evidence. In addition, the parties further agreed that future medical benefits are not at issue in this appeal.

### ISSUES

The ALJ found that as a result of her accidental injury the claimant is entitled to a 9 percent permanent partial impairment of her lower leg and a 9 percent permanent partial impairment to her shoulder based upon the opinions expressed by Dr. Stein, the independent medical examiner. In deciding whether to combine the two impairments, the ALJ indicated that “[c]ase law is clear that these injuries should be considered as two separate scheduled injuries and not a whole body injury.”<sup>1</sup>

The claimant requests review of nature and extent of her impairment. Claimant argues that her impairments include not only the left shoulder and right lower extremity, but her neck as well, based upon the testimony of Dr. Murati. And as such, she maintains her impairment is considered one to the whole body rather than as a separately scheduled injury. Thus, claimant contends she is entitled to have her functional impairment increased to a minimum of 18 percent to the body as a whole as testified to by Dr. Murati.

Respondent argues that the Award should be affirmed in all respects with benefits based on two scheduled injuries as dictated by the holdings in *Pruter*<sup>2</sup>, and *Mathena*<sup>3</sup>.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds that the ALJ's Award should be affirmed.

The ALJ succinctly and adequately set forth the facts and medical opinions contained within the record and the Board adopts that statement as its own. Highly summarized, claimant fell and broke her right lower leg in two places. How and when her left shoulder became injured is not clear. At least one medical record suggests that as a result of her injury, claimant used crutches and a cane to ambulate and ultimately she developed pain in her left shoulder. Another report suggests claimant injured her shoulder in the accident itself and when using crutches, aggravated that injury. In either instance, there is no dispute that the shoulder injury and resulting impairment are compensable. However, the method by which claimant's recovery is calculated is at the heart of this appeal.

Three physicians evaluated and rated claimant's permanent impairments. Dr. C. Reiff Brown saw claimant in 2004 for purposes of determining claimant's need for further

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<sup>1</sup> ALJ Award (June 29, 2006) at 3.

<sup>2</sup> *Pruter v. Larned State Hospital*, 271 Kan. 865, 26 P.3d 666 (2001).

<sup>3</sup> *Mathena v. IBP, Inc.*, 33 Kan. App. 2d 956, 111 P. 3d 1068 (2005).

treatment. He saw claimant again on March 2, 2005 and at that time, he concluded she was at maximum medical improvement. Although claimant had been offered additional surgery to remove the hardware from her ankle, she declined. He then went on to rate claimant's right lower extremity at 9 percent, due to low dorsiflexion and loss of eversion movement. Dr. Brown went on to opine that claimant's use of crutches caused rotator cuff tendinitis in the left shoulder which resulted in a loss of use of the shoulder and pain. He assessed a 7 percent permanent partial impairment of function to the left shoulder, and Dr. Brown went on to combine these two ratings for a 9 percent permanent partial impairment to the body as a whole.<sup>4</sup>

At her attorney's request, claimant was evaluated by Dr. Pedro Murati in June 2005. Like Dr. Brown, Dr. Murati diagnosed and rated claimant's left shoulder and her right lower extremity. However, he also diagnosed and rated right SI joint dysfunction, right patellofemoral syndrome, right trochanteric bursitis, left rotator cuff *tear*, and myofascial pain syndrome of the left shoulder *and neck*. When combined, his total impairment rating was 18 percent to the whole person.

When the parties could not agree upon a functional impairment, the ALJ appointed Dr. Paul Stein to examine and evaluate the claimant. Dr. Stein's report indicates claimant sustained an injury to her left shoulder and fractures to her right leg as a result of her work-related accident. His report further indicates claimant's shoulder was aggravated by her use of crutches following her injury. He assigned a 9 percent permanent partial impairment to the left shoulder and a 9 percent permanent partial impairment to the right lower extremity. When combined, these ratings yield a 9 percent whole person impairment.

The ALJ considered all the evidence and indicated she was more persuaded by Dr. Stein's opinions "as he conducted the most recent evaluation and was the court ordered evaluator."<sup>5</sup> And rather than combine the ratings, she awarded claimant separate functional impairments based upon what she viewed as "clear" case law.

It appears that based upon *Pruter*,<sup>6</sup> the ALJ reasoned that claimant's impairment should be calculated as two separate scheduled injuries rather than a whole body disability. Indeed, claimant does not dispute this legal principle. However, claimant maintains that she injured not just her shoulder and her ankle, but her neck as well. And by sustaining such an injury, her impairment is not found on the schedule of injuries contained within K.S.A. 44-510d and is therefore to be calculated based upon the

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<sup>4</sup> Dr. Brown's report indicates that the combined impairment is 11 percent, but the parties agree that he made a calculation error and that the two impairment ratings, when properly combined, is 9 percent to the body as a whole.

<sup>5</sup> ALJ Award (June 29, 2006) at 3.

<sup>6</sup> *Pruter v. Larned State Hospital*, 271 Kan. 865, 26 P.3d 666 (2001).

principles set forth in K.S.A. 44-510e. This would mean that claimant's recovery would be based upon a whole body impairment and not as two separate scheduled impairments.

The Board has considered the parties' arguments and finds, like the ALJ, that it is persuaded by the opinions expressed by Dr. Stein and affirms the ALJ's finding that claimant sustained two scheduled injuries, one to the left shoulder (9 percent) and another to the right lower extremity (9 percent). Dr. Murati diagnosed a variety of other conditions in an effort to justify the 18 percent to the whole body impairment. However, other than the left shoulder and right ankle problems, neither of the other physicians who testified in this matter noted such other complaints. Even claimant limited her testimony to complaints in her left shoulder and right ankle. There was no testimony from her as to neck complaints. For these reasons, the Board finds the ALJ's Award should be affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant  
Shirla R. McQueen, Attorney for Respondent and its Insurance Carrier  
Pamela J. Fuller, Administrative Law Judge